IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8267 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ZINABHAI M AHIR

Versus

GAMANBHAI JIVANBHAI

Appearance:

MR RN SHAH for Petitioner

MR JIVANLAL M PATEL for Respondent No. 1

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 13/10/2000

C.A.V. JUDGEMENT

There is a land bearing block No. 346 paiki admeasuring 1 acre of the land situated at village Kanbhai, Taluka Chikli, Dist. Valsad (hereinafter referred to as `the suit land'). The petitioner-original applicant, Zinabhai M. Ahir, who is tenant of the suit

land, has filed this Special Civil Application against the judgement and order dated 13.11.1987 passed by the Deputy Collector, Valsad and the judgement and order dated 30.7.1991 passed by the Gujarat Revenue Tribunal, Ahmedabad, dismissing Revision Application No. TEN/BS/77/88.

2. The facts giving rise to this application are as under:-

The petitioner had filed an application under Section 70(b) of the Bombay Tenancy and Agricultural Lands Act (hereinafter referred to as `the Act') on 2.12.1985 for declaring him as tenant of the suit land by contending inter alia that this land is being cultivated by him since more than 36 years and it was given on lease from deceased Jivanbhai Gulabbhai Patel father of the opponents and that he had given the share from the produce of the said land to deceased Jivanbhai who died before 10 years. It was further stated in the petition that he had given rent of Rs. 5/- to the owners of the land and that his name was entered as tenant in the revenue record by entry No. 900 dated 13.2.1974 and the said entry is being certified by the competent authority. It was averred in the petition that thereafter on account of relation being strained with the owners of the land, the petitioner was constrained to purchase the said land by paying consideration of Rs. 1,680/- and thereafter proceedings was initiated under Section 38(o) of the provisions of the Act. However, the same was subsequently dropped. It was submitted that the possession of the suit land was with the petitioner and he has claimed tenancy right with regard to 29 gunthas of land from the said block.

2.1 It was stated in the petition that the Mamlatdar and A.L.T. after recording the evidence and perusing the records held that the petitioner was tenant of one acre of land out of 4 acre and 37 gunthas of block No. 346. The Mamlatdar passed the order dated 1.2.1986 in this behalf. The said order was produced with the petition at Annexure-C.

3. Being aggrieved and dissatisfied with the aforesaid judgement and order the respondents preferred an appeal before the Deputy Collector, Valsad, who by his order dated 13.11.1987 allowed the appeal by setting aside order dated 1.2.1986 passed by the Mamlatdar & A.L.T. A copy of the order of the Deputy Collector has also been produced in the record of the case at Annexure-B of the petition.

4. Being aggrieved and dissatisfied with the judgement and order dated 13.11.1987 passed by the Deputy Collector, the petitioner preferred a Revision Application being No. TEN/BS/77/88 before the Gujarat Revenue Tribunal, Ahmedabad. The Tribunal confirmed the order of the Deputy Collector and held that the order of the Deputy Collector is legal and proper. He has confirmed the finding of the Deputy Collector that by granting tenancy rights over the land admeasuring 1 acre, there is violation of the Fragmentation Act. A block cannot be sub-divided. A tenant cannot be declared after 1.4.1957 for the land which is a fragment. The Tribunal therefore dismissed the revision application.

5. Shri R.N. Shah, learned advocate for the petitioner has raised the following contentions before me at the time of hearing of this application.

i) that the order of the Tribunal is contrary to law and against evidence on record.

ii) He has further submitted fact that the petitioner's name is being entered in the revenue record by entry No. 900 dated 13.2.1974 and that the said entry being sanctioned by the authorities, the Tribunal ought to have held that the petitioner is tenant of the lands in question.

iii) It was further submitted that the Courts below must take into consideration the fact of concealed tenancy and more particularly when admittedly the impugned entry in the revenue record showing the petitioner as tenant.

6. I have gone through the record of the case and I have also gone through the order of the Deputy Collector, Valsad as well as the order of the Revenue Tribunal. In my view, the reasoning given by the Deputy Collector and the finding of the Tribunal are legal and valid. Therefore, I am of the opinion that finding of both the Revenue Tribunal and the Deputy Collector are right when they have observed that there is no evidence about tenancy like receipts of land revenue, giving of rent etc. In my view the finding of the Deputy Collector that if the applicant is in possession of the land in question since last 30-35 years, then such possession would have been disclosed at the time of introduction of consolidation scheme and separate block number would have been given for the land in possession, is cogent and convincing. In my view, therefore, the finding of the Deputy Collector that by granting tenancy rights over the

land admeasuring one acre, there is violation of the Fragmentation Act and a block cannot be sub-divided is also correct. Hence the findings recorded by the Deputy Collector, Valsad and the Revenue Tribunal, Ahmedabad, are proper and legal.

7. This petition has been filed under Article 227 of the Constitution of India and I have very limited jurisdiction to entertain it. In this case the finding of fact has been arrived at by both the Deputy Collector and the Revenue Tribunal, which I have extracted above in earlier paragraph. All the findings of fact are concurrent findings fact and there is no error apparent on the face of the record as well as there is no legal error committed by the Revenue Tribunal as well as the Deputy Collector. I, therefore, find no reason to interfere with the findings of the Deputy Collector as well as the Revenue Tribunal. This petition is therefore required to be rejected and it is rejected accordingly with no order as to costs.

(K.M. MEHTA, J)
(pkn)